THE TRANSFER OF PROPERTY (AMENDMENT) SUPPLEMENTARY BILL.

A Bill to supplement the Transfer of Property (Amendment) Regulation.

Whereas by reason of the passing of the Transfer of Property (Amendment) Regulation it is expedient that certain amendments should be made in certain other enactments; it is hereby enacted as follows:—

Short title and commencement.

1. (1) This Regulation may be called *the Transfer of Property (Amendment) Supplementary Regulation, 193* .

(2) It shall come into force on the 1st day of .....

Insertion of new Section 27-A. in Specific Relief Act.

2. After section 27 of the specific Relief Act, 1877, as in force in Mysore, the following section shall be inserted, namely:—

Specific performance in case of part performance of contract to lease.

"27-A. Subject to the provisions of this Chapter, where a contract to lease immovable property is made in writing signed by the parties thereto or on their behalf, either party may, notwithstanding that the contract, though required to be registered, has not been registered, sue the other for specific performance of the contract if,—

(*a*) where specific performance is claimed by the lessor, he has delivered possession of the property to the lessee in part performance of the contract; and

(*b*) where specific performance is claimed by the lessee, he has in part performance of the contract, taken possession of the property, or being already in possession, continues in possession in part performance of the contract, and has done some act in furtherance of the contract;

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.

This section applies to contracts to lease executed after the first day of ."

Amendment of Registration Regulation.

3. (1) In section 17 of the Mysore Registration Regulation, 1903,—

(*a*) after clause (*d*) the following clause shall be added, namely:—

"(*dd*) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards to or in immovable property"; and

(*b*) in clause (*j*) for the words "and awards" the words "except decrees or orders expressed to be made on a compromise and comprising immovable property other than that which is the subject matter of the suit or proceeding" shall be substituted.

(2) In section 48 of the same Regulation, after the words "or followed by delivery of possession" the following words shall be added, namely:—

"and the same constitutes a valid transfer under any law for the time being in force:

Provided that a mortgage by deposit of title deeds as defined in section 58 of the Transfer of Property Regulation shall take effect against any mortgage-deed subsequently executed and registered which relates to the same property."

(3) In section 49 of the same Regulation—

(*a*) after the word and figures "section 17" the words "or by any provision of the Transfer of Property Regulation" shall be inserted; and

(*b*) to that section the following proviso shall be added, namely:—

"Provided that an unregistered document affecting immovable property and required by this Regulation or the Transfer of Property Regulation to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877, as in force in Mysore, or as evidence of part performance of a contract for the purposes of section 53-A of the Transfer of Property Regulation or as evidence of any collateral transaction not required to be effected by registered instrument."

Amendment of Indian Succession Act.

4. (1) In section 102 of the Indian Succession Act, 1865, as in force in Mysore.

(*a*) for the words "wholly void" the words "void in regard to those persons only and not in regard to the whole class" shall be substituted;

(*b*) in *Illustration* (*a*) for the words "and, as it is given to all his children as a class, it is not good as to any division of that class, but is wholly void" the following words shall be substituted, namely :—

"and in regard to those who do not attain the age of 25 within 18 years after A's death, but is operative in regard to the other children of A"; and

(*c*) in *Illustration* (*b*), for the words "The mention of B, C and D by name does not prevent the bequest from being regarded as a bequest to a class, and the bequest is wholly void" the following words shall be substituted, namely :—

"Although the mention of B, C and D does not prevent the bequest from being regarded as a bequest to a class, it is not wholly void. It is operative as regards any of the children B, C or D, who attains the age of 25 within 18 years after A's death."

(2) for section 103 of the same Act, the following section shall be substituted, namely :—

Bequest to take effect on failure of prior bequest.

"103. Where by reason of any of the rules contained in sections 100 and 101 any bequest in favour of a person or of a class of persons is void in regard to such person or the whole of such class, any bequest contained in the same will and intended to take effect after or upon failure of such prior bequest is also void."

(3) For section 104 of the same Act and the *Illustration* thereto, the following section shall be substituted, namely :—

Effect of direction for accumulation.

"104. (1) Where the terms of a will direct that the income arising from any property shall be accumulated either wholly or in part during any period longer than a period of eighteen years from the death of the testator, such direction shall, save as hereinafter provided, be void to the extent to which the period during which the accumulation is directed exceeds the aforesaid period, and at the end of such period of eighteen years the property and the income thereof shall be disposed of as if the period during which the accumulation has been directed to be made had elapsed.

(2) This section shall not affect any direction for accumulation for the purpose of—

(i) the payment of the debts of the testator or any other person taking any interest under the will, or

(ii) the provision of portions for children or remoter issue of the testator or of any other person taking any interest under the will, or

(iii) the preservation or maintenance of any property bequeathed;

and such direction may be made accordingly."

Savings.

5. Nothing in this Regulation shall be deemed to affect—

(*a*) the terms or incidents of any transfer or disposition of property made or effected before the first day of .....

(*b*) the validity, invalidity, effect or consequences of anything already done or suffered before the aforesaid date;

(*c*) any right, title, obligation or liability already acquired, accrued or incurred before such date;

(*d*) any remedy or proceeding in respect of such right, title, obligation or liability; or

(*e*) anything done in the course of any proceeding pending in any Court on the aforesaid date;

and any such remedy or proceeding may be enforced, instituted or continued, as the case may be, as if this Regulation had not been passed.

Statement of Objects and Reasons.

Consequent on the amendments proposed to the Transfer of Property Regulation, it has become necessary to introduce amendments to (1) Specific Relief Act, (2) Registration Regulation, (3) Succession Act, (4) Limitation Regulation and (5) Code of Civil Procedure.

Amendments to the Specific Relief Act give effect to the principle of part performance embodied in the new section 53-A of the Transfer of Property Regulation.

Registration Regulation is amended so that assignments of decrees, orders and awards relating to immovable property may be always registered. Courts will be empowered to admit unregistered documents in evidence in giving effect to the doctrine of part performance.

Succession Act is amended in conformity with the amendments to sections 15 to 18 of the Transfer of Property Regulation.

Amendment to the Limitation Regulation providing for a period of limitation governing suits to recover the money due on a mortgage by the deposit of title deeds is included in the Bill to amend the Limitation Regulation proposed to be introduced.

The amendments to the Code of Civil Procedure relate to Order XXXIV of the First Schedule thereto and the forms in Appendix D. These may, in due course, be made by the High Court itself under their rule-making power, and they are not therefore included in the bill.

Detailed explanations of the several clauses are given below:

NOTES ON CLAUSES.

Clause 2.—Consequent on the statutory recognition of part performance in section 53-A of the Transfer of Property Regulation, it is necessary to insert a new section in the Specific Relief Act providing for specific performance in cases where the doctrine of part performance is applicable.

Clause 3.—Amendment of the Registration Regulation: A new clause (*dd*) is inserted in section 17 of the Registration Regulation so as to make it definite that the assignment of a mortgage decree requires registration on the ground that the right to sell immovable property which is given by the assignment is a right or interest in the property.

Clause (j) of section 17 is amended so that the exemption from registration will not apply to decrees and orders expressed to be made on a compromise and comprising immovable properties outside the scope of the suit or proceeding as it would otherwise lead to hardships.

The word 'awards' is also omitted as non-registration of awards affecting immovable property creates the same hardship.

It is proposed to amend section 48 of the Registration Regulation so as to make it clear that only those transactions which can validly be made by an oral agreement and by delivery of possession according to the provisions of any law for the time being in force and also mortgages by deposit of title deeds cannot be supplanted by subsequent registered instruments.

The doctrine of part performance having been recognised, unregistered documents have to be admitted in evidence to prove part performance. Hence section 49 of the Registration Regulation is amended. It is also made clear that documents which require to be registered but have not been registered can be admitted in evidence for a collateral purpose.

Clause 4.—The amendments proposed in this clause to the Succession Act are consequential upon those proposed to be made in Sections 15, 16 and 18 of the Transfer of Property Regulation.

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